

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Feb 23, 2023

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JUDITH RABENSTEINER,

Plaintiff,

v.

US BANK, NA, a national bank; and
DOES 1-10,

Defendant.

No. 2:22-CV-00317-MKD

**PROTECTIVE ORDER FOR
CONFIDENTIALITY**

ECF No. 20

Before the Court is the parties' Stipulation Regarding Entry of Protective Order, ECF No. 20. At the February 16, 2023 Scheduling Conference, the parties discussed a dispute over a confidentiality protective order. The parties now stipulate and agree to a proposed order, and represent that the tentatively scheduled video conference set for February 27, 2023, may be cancelled. The Court has reviewed the record and the motion and finds good cause to grant the request.

Accordingly, **IT IS HEREBY ORDERED:**

1. The parties' Stipulation Regarding Entry of Protective Order, **ECF No. 20**, is **GRANTED**.

1 2. The video conference scheduled for February 27, 2023, is
2 **STRICKEN.**

3 3. The following terms shall apply to discovery in this case:

4 1. PURPOSES AND LIMITATIONS

5 Discovery in this action is likely to involve production of confidential,
6 proprietary, or private information for which special protection may be warranted.
7 Accordingly, Defendant U.S. Bank hereby petitions the court to enter the following
8 Protective Order. This Protective Order does not confer blanket protection on all
9 disclosures or responses to discovery, the protection it affords from public disclosure
10 and use extends only to the limited information or items that are entitled to
11 confidential treatment under the applicable legal principles, and it does not
12 presumptively entitle parties to file confidential information under seal.

13 2. “CONFIDENTIAL” MATERIAL

14 “Confidential” material shall be limited to non-public information,
15 documents, and tangible things that the producing party or non-party reasonably and
16 in good faith believes to be private, personal, confidential, proprietary, trade secret,
17 and/or commercially sensitive, such that protection from public disclosure is
18 warranted. Confidential material shall include non-public banking information,
19 financial information, tax information, personal records, confidential internal
20 business records, trade secrets, proprietary data, employment information, personal

1 identification information, and other similarly sensitive information that the
2 producing party or non-party must keep in confidence or as to which disclosure could
3 result in injury, and which is not publicly known and cannot be ascertained from
4 information that is readily available to the public. Confidential material specifically
5 includes here banking and financial information of Plaintiff and internal non-public
6 business records of Defendant.

7 3. SCOPE

8 The protections conferred by this order cover not only confidential material
9 (as defined above), but also (1) any information copied or extracted from
10 confidential material; (2) all copies, excerpts, summaries, or compilations of
11 confidential material; and (3) any testimony, conversations, or presentations by
12 parties or their counsel that might reveal confidential material. However, the
13 protections conferred do not cover information that is in the public domain or
14 becomes part of the public domain through trial or otherwise.

15 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

16 4.1 Basic Principles. A receiving party may use confidential material that
17 is disclosed or produced by another party or by a non-party in connection with this
18 case only for prosecuting, defending, or attempting to settle this litigation.
19 Confidential material may be disclosed only to the categories of persons and under
20 the conditions described in this order. Confidential material must be stored and

1 maintained by a receiving party at a location and in a secure manner that ensures that
2 access is limited to the persons authorized under this order.

3 4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
4 otherwise ordered by the court or permitted in writing by the designating party, a
5 receiving party may disclose any confidential material only to:

6 (a) the receiving party’s counsel of record in this action, as well as
7 employees of counsel to whom it is reasonably necessary to disclose the
8 information for this litigation;

9 (b) the officers, directors, and employees (including in house counsel)
10 of the receiving party to whom disclosure is reasonably necessary for this
11 litigation, unless the parties agree that a particular document or material
12 produced is for Attorney’s Eyes Only and is so designated;

13 (c) experts and consultants to whom disclosure is reasonably necessary
14 for this litigation and who have signed the “Acknowledgment and Agreement
15 to Be Bound” (Exhibit A);

16 (d) the court, court personnel, and court reporters and their staff;

17 (e) copy or imaging services retained by counsel to assist in the
18 duplication of confidential material, provided that counsel for the party
19 retaining the copy or imaging service instructs the service not to disclose any
20

1 confidential material to third parties and to immediately return all originals
2 and copies of any confidential material;

3 (f) during their depositions, witnesses in the action to whom disclosure
4 is reasonably necessary and who have signed the “Acknowledgment and
5 Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the
6 designating party or ordered by the court. Pages of transcribed deposition
7 testimony or exhibits to depositions that reveal confidential material must be
8 separately bound by the court reporter and may not be disclosed to anyone
9 except as permitted under this order;

10 (g) the author or recipient of a document containing the information or
11 a custodian or other person who otherwise possessed or knew the information.

12 4.3 Filing Confidential Material. Before filing confidential material or
13 discussing or referencing such material in court filings, the filing party shall confer
14 with the designating party, to determine whether the designating party will remove
15 the confidential designation, whether the document can be redacted, or whether a
16 motion to seal or stipulation and proposed order is warranted. During the meet and
17 confer process, the designating party must identify the basis for sealing the specific
18 confidential information at issue, and the filing party shall include this basis in its
19 motion to seal, along with any objection to sealing the information at issue. A party
20 who seeks to maintain the confidentiality of its information bears the burden of

1 establishing the basis for sealing, even if it is not the party filing the motion to seal.
2 Failure to satisfy this requirement will result in the motion to seal being denied, in
3 accordance with the strong presumption of public access to the Court's files.

4 **5. DESIGNATING PROTECTED MATERIAL**

5 **5.1 Exercise of Restraint and Care in Designating Material for Protection.**

6 Each party or non-party that designates information or items for protection under
7 this order must take care to limit any such designation to specific material that
8 qualifies under the appropriate standards. The designating party must designate for
9 protection only those parts of material, documents, items, or oral or written
10 communications that qualify, so that other portions of the material, documents,
11 items, or communications for which protection is not warranted are not swept
12 unjustifiably within the ambit of this order. Mass, indiscriminate, or routinized
13 designations are prohibited. Designations that are shown to be clearly unjustified or
14 that have been made for an improper purpose (e.g., to unnecessarily encumber or
15 delay the case development process or to impose unnecessary expenses and burdens
16 on other parties) expose the designating party to sanctions. If it comes to a
17 designating party's attention that information or items that it designated for
18 protection do not qualify for protection, the designating party must promptly notify
19 all other parties that it is withdrawing the mistaken designation.
20

1 5.2 Manner and Timing of Designations. Except as otherwise provided in
2 this order (see, e.g., second paragraph of section 5.2(b) below), or as otherwise
3 stipulated or ordered, disclosure or discovery material that qualifies for protection
4 under this order must be clearly so designated before or when the material is
5 disclosed or produced. (a) Information in documentary form: (e.g., paper or
6 electronic documents and deposition exhibits, but excluding transcripts of
7 depositions or other pretrial or trial proceedings), the designating party must affix
8 the word “CONFIDENTIAL” to each page that contains confidential material. If
9 only a portion or portions of the material on a page qualifies for protection, the
10 producing party also must clearly identify the protected portion(s) (e.g., by making
11 appropriate markings in the margins). (b) Testimony given in deposition or in other
12 pretrial proceedings: the parties and any participating non-parties must identify on
13 the record, during the deposition or other pretrial proceeding, all protected
14 testimony, without prejudice to their right to so designate other testimony after
15 reviewing the transcript. Any party or non-party may, within fifteen days after
16 receiving the transcript of the deposition or other pretrial proceeding, designate
17 portions of the transcript, or exhibits thereto, as confidential. If a party or non-party
18 desires to protect confidential information at trial, the issue should be addressed
19 during the pre-trial conference. (c) Other tangible items: the producing party must
20 affix in a prominent place on the exterior of the container or containers in which the

1 information or item is stored the word “CONFIDENTIAL.” If only a portion or
2 portions of the information or item warrant protection, the producing party, to the
3 extent practicable, shall identify the protected portion(s).

4 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
5 failure to designate qualified information or items does not, standing alone, waive
6 the designating party’s right to secure protection under this order for such material.
7 Upon timely correction of a designation, the receiving party must make reasonable
8 efforts to ensure that the material is treated in accordance with the provisions of this
9 order.

10 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

11 6.1 Timing of Challenges. Any party or non-party may challenge a
12 designation of confidentiality at any time. Unless a prompt challenge to a
13 designating party’s confidentiality designation is necessary to avoid foreseeable,
14 substantial unfairness, unnecessary economic burdens, or a significant disruption or
15 delay of the litigation, a party does not waive its right to challenge a confidentiality
16 designation by electing not to mount a challenge promptly after the original
17 designation is disclosed.

18 6.2 Meet and Confer. The parties must make every attempt to resolve any
19 dispute regarding confidential designations without court involvement. Any motion
20 regarding confidential designations or for a protective order must include a

1 certification, in the motion or in a declaration or affidavit, that the movant has
2 engaged in a good faith meet and confer conference with other affected parties in an
3 effort to resolve the dispute without court action. The certification must list the date,
4 manner, and participants to the conference. A good faith effort to confer requires a
5 face-to-face meeting or a telephone conference.

6 6.3 Judicial Intervention. If the parties cannot resolve a challenge without
7 court intervention, the designating party may file and serve a motion to retain
8 confidentiality. The burden of persuasion in any such motion shall be on the
9 designating party. Frivolous challenges, and those made for an improper purpose
10 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
11 expose the challenging party to sanctions. All parties shall continue to maintain the
12 material in question as confidential until the court rules on the challenge.

13 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
14 OTHER LITIGATION

15 If a party is served with a subpoena or a court order issued in other litigation
16 that compels disclosure of any information or items designated in this action as
17 “CONFIDENTIAL,” that party must:

18 (a) promptly notify the designating party in writing and include a copy of the
19 subpoena or court order;
20

1 (b) promptly notify in writing the party who caused the subpoena or order to
2 issue in the other litigation that some or all of the material covered by the subpoena
3 or order is subject to this order. Such notification shall include a copy of this order;
4 and

5 (c) cooperate with respect to all reasonable procedures sought to be pursued
6 by the designating party whose confidential material may be affected.

7 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

8 If a receiving party learns that, by inadvertence or otherwise, it has disclosed
9 confidential material to any person or in any circumstance not authorized under this
10 order, the receiving party must immediately (a) notify in writing the designating
11 party of the unauthorized disclosures, (b) use its best efforts to retrieve all
12 unauthorized copies of the protected material, (c) inform the person or persons to
13 whom unauthorized disclosures were made of all the terms of this order, and (d)
14 request that such person or persons execute the “Acknowledgment and Agreement
15 to Be Bound” that is attached hereto as Exhibit A.

16 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
17 PROTECTED MATERIAL

18 When a producing party gives notice to receiving parties that certain
19 inadvertently produced material is subject to a claim of privilege or other protection,
20 the obligations of the receiving parties are those set forth in Federal Rule of Civil

1 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure
2 may be established in an e-discovery order or agreement that provides for production
3 without prior privilege review.

4 10. NON TERMINATION AND RETURN OF DOCUMENTS

5 Within 60 days after the termination of this action, including all appeals, each
6 receiving party must return all confidential material to the producing party, including
7 all copies, extracts and summaries thereof. Alternatively, the parties may agree upon
8 appropriate methods of destruction.

9 Notwithstanding this provision, counsel are entitled to retain all documents
10 filed with the court, trial, deposition, and hearing transcripts, correspondence,
11 deposition and trial exhibits, expert reports, attorney work product, and consultant
12 and expert work product, even if such materials contain confidential material.

13 The confidentiality obligations imposed by this order shall remain in effect
14 until a designating party agrees otherwise in writing or a court orders otherwise.

15 **IT IS SO ORDERED.** The District Court Executive is directed to file this
16 order and provide copies to the parties.

17 DATED February 23, 2023.

18
19 s/Mary K. Dimke
MARY K. DIMKE
20 UNITED STATES DISTRICT JUDGE

EXHIBIT A

ACKNOWLEDGEMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Protective Order that was issued by the United States District Court for Eastern District of Washington in the case of *Judith Rabensteiner vs. U.S. Bank, N.A.*, Case No. 22-2-00228-04. I agree to comply with and to be bound by all the terms of this Protective Order and I understand and acknowledge that failure to comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Protective Order to any person or entity except in strict compliance with the provisions of this Protective Order. I further agree to submit to the jurisdiction of the Eastern District of Washington for the purpose of enforcing the terms of this Protective Order, even if such enforcement proceedings occur after termination of this action.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____